

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Brett Randall Walen,

Civil No. 10-2022 (DWF/JJK)

Petitioner,

v.

**ORDER ADOPTING REPORT  
AND RECOMMENDATION  
AND MEMORANDUM**

Warden John King,

Respondent.

---

Kyle D. White, Esq., Attorney at Law, counsel for Petitioner.

G. Paul Beaumaster and Meredith A. Erickson, Assistant Rice County Attorneys, Rice County Attorney's Office; and Kimberly R. Parker and Matthew Frank, Assistant Attorneys General, Minnesota Attorney General's Office, counsel for Respondent.

---

This matter is before the Court upon the objections of Petitioner Brett Randall Walen ("Petitioner") to Magistrate Judge Jeffrey J. Keyes' Report and Recommendation dated November 29, 2010, insofar as it recommends that: (1) Respondent's Motion to Dismiss Petition for Writ of Habeas Corpus be granted; (2) Petitioner's Motion to Compel Discovery be denied; (3) Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody be denied; and (4) this action be dismissed with prejudice.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and

precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

### **ORDER**

1. Petitioner Brett Randall Walen's objections (Doc. No. [20]) to Magistrate Judge Jeffrey J. Keyes' Report and Recommendation dated November 29, 2010, are **DENIED**.

2. Magistrate Judge Jeffrey J. Keyes' Report and Recommendation dated November 29, 2010 (Doc. No. [19]), is **ADOPTED**.

3. Respondent's Motion to Dismiss Petition for Writ of Habeas Corpus (Doc. No. [8]), is **GRANTED**.

4. Petitioner's Motion to Compel Discovery (Doc. No. [3]), is **DENIED**.

5. Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Doc. No. [1]), is **DENIED**.

6. This action is **DISMISSED WITH PREJUDICE**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: February 3, 2011

s/Donovan W. Frank  
DONOVAN W. FRANK  
United States District Judge

## MEMORANDUM

The Court has respectfully overruled Petitioner's objections to the Report and Recommendation. More than 15 years have elapsed with little explanation as to why this request is being made in such an untimely fashion. The Court concurs with the analysis of the Magistrate Judge, and with the analysis by the Minnesota Supreme Court, that even if this information had been fully available for all purposes at the time of trial, it would not have changed the result or otherwise entitled Petitioner to relief. The Court also concurs in the Minnesota Supreme Court's analysis on the *Brady* issue. For all of those reasons, Petitioner falls short of the good cause requirement that would have entitled him to relief with respect to his motion to compel discovery.

Finally, even when the Court considers the more than one year delay on the part of the state district court in deciding Petitioner's post-conviction claims, the Court concurs with the analysis of the Magistrate Judge that Petitioner fails to show that he acted diligently after the final judgment of the conviction was entered in 1997. The Court concludes, as the Magistrate Judge did, that Petitioner has failed to meet his burden to show that equitable tolling on the one-year statute of limitations is warranted. However, the Court must observe that even if the one-year statute were tolled and Petitioner could bring his additional constitutional claims, the Court, with the record that it has before it, would deny those claims on the merits.

For these reasons, the Court has adopted the Report and Recommendation based upon its *de novo* review of the record of the Magistrate Judge.

D.W.F.